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Saturday, September 23, 2000

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

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In re

NANCY MARIE CHAFFIN,

No. 97-10868

[Debtor](#)  (s).

\_\_\_\_\_ /

JACK WONG,

[Plaintiff](#)  (s),

v.

A.P. No. 97-1151

NANCY MARIE CHAFFIN,

[Defendant](#)  (s).

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## **Memorandum of Decision**

There is no "good guy" in this [adversary proceeding](#)<sup>(1)</sup>. Plaintiff Jack Wong, who seeks a nondischargeable judgment for fraud and defalcation, is an admitted perjurer.<sup>(1)</sup> Debtor and defendant Nancy Chaffin is the black sheep of a prominent family, and has pleaded guilty to criminal charges arising out of this and other cases. The case is a difficult one for the court to adjudicate because the stories of the parties are markedly different, neither party made a credible witness, and neither side seems deserving of any sympathy. Nonetheless, the court's job is to weigh the evidence and make the best determinations it can. Plaintiff Jack Wong is a successful, articulate, intelligent, educated businessman who has been involved in numerous business ventures including real estate development, overseas investment, and a car dealership. He became acquainted with Chaffin in 1992, when she was an employee of an auction house. At some time after their first meetings, Chaffin called Wong and told him about an investment opportunity regarding an art collection in Hawaii which, according to Chaffin, could be purchased cheaply and resold at a profit. She proposed that she and Wong each put up \$65,000.00 to purchase the art. Chaffin would receive a 5% commission, and they would split the profits evenly. Wong agreed. Between August and September, 1992, Wong gave Chaffin \$65,500.00, by depositing money directly into Chaffin's bank accounts.<sup>(2)</sup>

In the fall of 1992, Chaffin told Wong that she needed money and was willing to sell her painting, "The Franconian Notch," to him for \$30,000.00, even though it was worth much more. Wong agreed to purchase the painting, and over the next few months deposited \$30,000.00 into her accounts. He never asked for possession of the painting, which he had never even seen. In early 1993, Chaffin approached Wong with another money-making opportunity. She explained to Wong that she had been hired by a wealthy man, one Gordon Moore, to advise him in the purchase of art work for his mansion, and that she was aware that a museum was selling art work of the type he wanted. She proposed that she and Wong buy the art and re-sell it to Moore. Wong readily agreed.<sup>(3)</sup> It is at this point that the case begins to become unfathomable. From May, 1993, to November, 1994, Wong deposited \$459,957.00 into Chaffin's bank accounts, ostensibly pursuant to the scheme to cheat Moore. Wong made these deposits without ever receiving any return on his prior investments, without any sort of meaningful accounting, and without laying eyes of on the artwork Chaffin was supposedly purchasing. In addition, during the same time Chaffin began giving Wong a series of checks, none of which were any good, for very large amounts. One check, for \$59,500.00, was given to Wong on June 29, 1993. Another, for \$200,000.00, was given on July 8, 1994 and another, for \$400,000.00, was given on July 9, 1994. None of these checks was honored by her bank. Despite this, Wong was still depositing large sums of money into Chaffin's accounts as late as November 21, 1994. Stranger still, most of Chaffin's bad checks were marked "loan repayment."<sup>(4)</sup> As it turns out, Chaffin used little or none of the funds she received from Wong for the purchase of art work, and did not even own "The Franconian Notch." She had never even met Gordon Moore. She used the money from Wong for personal living expenses. She pleaded guilty to defrauding Wong in state court criminal proceedings, and was ordered to pay Wong \$325,671.00 in restitution. She has paid \$95,885.00, leaving unpaid restitution of \$229,786.00. Chaffin does not contest that this amount is nondischargeable. However, this concession did not end the case. Wong seeks a judgment

for the entire \$558,357.00 he says he gave her, less the \$95,885.00 he recovered, for a net of \$462,472.00. The court does not believe Wong's assertions that he was interested only in a business relationship with Chaffin, and that he gave Chaffin every dime because he believed that she was investing everything in art work. While this was probably true as to the initial \$65,000.00, and perhaps as to "The Franconian Notch" as well, it is far more likely that by the middle of 1993 Wong was interested in a relationship with Chaffin and was giving her considerable sums, without strings, in an attempt to influence her. Many factors lead the court to this conclusion, including the following:

1. Wong was a sophisticated businessman, yet gave large sums to Chaffin without any sort of safeguards or documentation. He deposited much of the money directly into Chaffin's bank accounts. 2. In many instances where Wong used a check to give money to Chaffin, Wong noted "loan" on them. Wong's explanation for this is particularly unbelievable; he clearly knows the difference between a loan and an investment.<sup>(5)</sup> 3. Wong continued to give Chaffin large amounts, even after checks he received from her were not honored by her bank. 4. Many of the bad checks from Chaffin to Wong or his corporations were clearly marked "loan repayment." 5. Wong knew, from Chaffin's apparent willingness to cheat Moore, that she had larceny in her heart. 6. Chaffin's testimony that Wong introduced her to his mother with the intent of gaining his mother's approval was unrefuted.

Incredibly, Wong sought to prove that he had no interest in Chaffin by insisting that the court hear testimony about his personal relations with a succession of attractive women, some of whom he called as witnesses. Far from proving disinterest, this testimony made Chaffin's version of the facts the more likely version. It appears to the court that during 1993 and 1994 Wong was showering Chaffin with money in the hopes of inducing her to have a relationship with him, and actively encouraging her to spend it on herself. Only when Chaffin rejected him did he seek to recover his money. It is far more likely than not that Wong knew he had been had by July, 1993, yet he continued to give Chaffin more than \$300,000.00.

Contrary to Wong's assertions, there is nothing in the criminal proceedings which compels the court to find that he was defrauded out of every dime he gave to Chaffin. A guilty plea in a criminal case is admissible in a civil proceeding to establish that a crime was committed. However, it does not necessarily establish the underlying factual matters at issue in civil litigation. Interinsurance Exchange v. Flores (1996) 45 Cal.App.4th 661, 672. As the court noted in Teitelbaum Furs, Inc. v. Dominion Insurance Company (1962), 58 Cal.2d 601, 25 Cal.Rptr. 559, 375 P.2d 439, 441:<sup>(6)</sup> "A plea of guilty is admissible in a subsequent civil action on the independent ground that it is an admission. It would not serve the policy underlying collateral estoppel, however, to make such a plea conclusive. 'The rule is based upon the sound public policy of limiting litigation by preventing a party who has had one fair trial on an issue from again drawing it into controversy.' (Bernhard v. Bank of America, 19 Cal.2d 807, 811, 122 P.2d 892, 894.) 'This policy must be considered together with the policy that a party shall not be deprived of a fair adversary proceeding in which fully to present his case.' (Jorgensen v. Jorgensen, 32 Cal.2d 13, 18, 193 P.2d 728, 732.) When a plea of guilty has been entered in the prior action, no issues have been 'drawn into controversy' by a 'full presentation' of the case. It may reflect only a compromise or a belief that paying a fine is more advantageous than litigation. Considerations of fairness to civil litigants and regard for the expeditious administration of criminal justice (see, Vaughn v. Jonas, 31 Cal.2d 586, 594, 191 P.2d 432) combine to prohibit the application of collateral estoppel against a party who, having pleaded guilty to a criminal charge, seeks for the first time to litigate his cause in a civil action." Chaffin pleaded guilty to defrauding Wong out of an amount in excess of \$150,000.00. Nothing in the criminal record appears to be inconsistent with the conclusions

this court reaches in this adversary proceeding, nor does this court violate principles of collateral estoppel or res judicata by deciding the issue of damages based on the evidence presented in this court. Section 523(a)(2) of the [Bankruptcy Code](#)<sup>i</sup> provides that a debt is nondischargeable *to the extent* that the debtor obtained money by fraud. Wong has failed to convince the court that Chaffin obtained all of the money by fraud. It is more likely that he gave at least half of the money to Chaffin with his eyes wide open. For the foregoing reasons, the court will enter a judgment that the \$229,786.00 restitution award is nondischargeable. Wong shall recover his costs of suit. This memorandum constitutes the court's findings and conclusions pursuant to FRCP 52(a) and FRBP 7052. Counsel for Wong shall submit an appropriate form of judgment forthwith.

Dated: September 23, 2000

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Alan Jaroslovsky

U.S. [Bankruptcy Judge](#)<sup>i</sup>

1. His attorney did not help his case any by inferring that the perjury was of lesser consequence because it took place only in a bankruptcy proceeding.
2. The money came from accounts in the name of corporations wholly owned by Wong. At the outset of trial, Chaffin argued that since the money came from defunct or suspended corporations, Wong could not sue for its return. The court found no merit to this position, since the funds in question belonged to Wong.
3. Wong testified that he saw nothing wrong with this scheme, as he had been involved in "double-escrow" purchase and sale of real property. There is, of course, nothing wrong with double-escrowing unless the buyer has been led to believe that the middleman is working for him. In which case, it is fraudulent.
4. Two promissory notes signed by Chaffin are part of the record of this case. However, these appear to have been drafted and signed in 1995, long after both the payments by Wong and the bad checks.
5. During the trial, Wong referred several times to Chaffin's wealthy family. It seems most likely to the court that Wong was treating his payments to Chaffin as loans in the expectation that Chaffin's family would repay them.
6. In dischargeability litigation, state law controls the applicability of res judicata and collateral estoppel. *In re Bugna*, 33 F.3d 1054, 1057 (9th Cir.1

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